C.J.'s Court
Reserved judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No.213 of 2001 (S/B)
(Old No.28852 of 1992)

1. The State of Uttar Pradesh through the Secretary to Government, Education Department, U.P., Civil Secretariat, Lucknow.
2. The Director of Education (Madhyamik), Uttar Pradesh, Allahabad,
3. The Deputy Director of Education, Kumaon Mandal, Nainital.
4. The District Inspector of Schools, Nainital.

..... Petitioners

Versus

1. Bhawani Shanker Kargeti at present working as the Teacher in L.T. Grade, Government Inter College, Bhatrauj Khan, Nainital.
2. Uttar Pradesh Public Services Tribunal No.I, Lucknow.

..... Respondents

Learned Chief Standing Counsel for the petitioners,
Sri B.D.Upadhyay, learned counsel for the respondent No. 1
Sri V.B.S.Negi, learned counsel for the respondent No.2.

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Dated: Feb. 23, 2006.

Hon'ble Rajeev Gupta, C.J.,
Hon'ble P.C. Verma, J.

(Delivered by Hon'ble P.C. Verma, J.)

This petition has been filed by the petitioners seeking writ of certiorari quashing the impugned order dated 23.04.1992 passed by the respondent No.1/Uttar Pradesh Public Service Tribunal, contained in Annexure IV to the writ petition.

2. Brief facts of the case giving rise to this petition are that the respondent No.1 was initially appointed as Head Master in the year 1972 in Kurmanchal Junior High School, Bhatraujkhan, District-Nainital which was a private and aided institution under the direct control of District Basic Shiksha Parishad. The respondent No.1 was confirmed on the said post in L.T. grade and his confirmation was approved by the District Basic Shiksha Adhikari. In the year 1976 the aforesaid Institution was taken over by the State Government and upgraded by Government Order dated 26.7.1976. By the said Government Order, five posts of teachers were created in L.T. grade. The respondent No.1 was also working in L.T. grade. There is no dispute that the petitioner was receiving salary in L.T. grade from the date of his appointment i.e. from 1972 till 26.7.1976. The Deputy Director of Education appointed the respondent No.1 as Assistant Teacher in C.T. grade instead of L.T. grade. The respondent No.1 filed representation against the same but with no effect. Then he filed the claim petition before the respondent No.2/ Uttar Pradesh Public Service Tribunal, Lucknow **(hereinafter referred to as the Tribunal)** with the request that he is entitled to get L.T. grade. The Tribunal, after hearing the parties, allowed the claim petition of the respondent No.1 and directed the Opp. parties (petitioners herein) to treat him in L.T. grade from the beginning when the School was taken over by the Government and also directed to pay arrears of salary accordingly with interest at the rate of 12% per annum. Feeling aggrieved, the Opp.parties/petitioners have come up in the writ petition.

3. The grounds taken by the petitioner, inter alia, are that the impugned judgment is without consideration of the objections and evidence placed on record. It is also alleged that the Tribunal has misinterpreted by accepting the approval of the District Basic Education Officer and passed the impugned order exceeding its limits. It is also alleged that after the provincialization and upgradation of the said School the respondent No.1 was given the fresh appointment in the Government service in C.T. grade and claiming L.T. grade is against the appointment letter.

4. In the counter affidavit the respondent No.1 alleged that in the year 1972 the recognition was given by the State Government to Kurmanchal Junior High School, Bhatraujkhan, Nainital and the respondent No.1 was working in L.T.grade in the same institution till the date of its provincialization and as such he was entitled for appointment in L.T. grade on the date on which the institution was upgraded and taken over by the State Government. It is also contended by the respondent No.1 that he has passed B.Ed. in the year 1974-75 and denied the assertion of the petitioners that he did not possess the requisite qualification and this fact has also been admitted by the petitioners before the Tribunal and on this admitted fact the Tribunal has given its finding.

5. We have heard the learned counsel for the parties and perused the material on record. The only contention of the petitioners is that the appointment of respondent No.1 in L.T. grade was not approved by the appropriate authorities when the School was taken over

by the Government and as such L.T. grade could not be given to him. It was not disputed before the Tribunal that the respondent No.1 (petitioner before the Tribunal) was appointed and working as Head Master in aided School prior to 26.7.1976 when the School was taken over by the Government. The learned counsel for the respondent No.1 vehemently argued that the respondent No.1 was appointed in L.T. grade on 26th June, 1975 by the Committee of Management and papers were submitted by the Management for approval to the Basic Shiksha Adhikari. The Committee of Management from time to time sent letters for approval of the respondent No.1 as well as other teachers to the Basic Shiksha Adhikari but their appointment was not approved and as such all the teachers who were working from time to time after 1972 will be deemed to have been approved by the District Basic Education Officer. In support of this contention the respondent No.1 annexed the Annexures CA-1 and CA-2 respectively to the counter affidavit. Annexure CA-2 show that the respondent No.1 was working for the Session 1972-73 till October 1976 as Head Master in L.T. grade. This paper was issued by concerning Pro Deputy Inspector of Schools.

6. The Government Order dated 26.7.1976 was absolutely clear that all the teachers or employees who are working in the Institution and possess the requisite qualification were to be appointed by the petitioners as per their qualification. The respondent No.1 was having the requisite qualification for L.T. grade and was working in the pay scale of L.T. grade teacher prior to provincialization of the Institution. Therefore, the Deputy

Director of Education also acted illegally in not granting L.T. grade to the respondent No.1 and appointing him in C.T. grade as the respondent No.1 was entitled to be appointed as L.T. grade teacher from the date when the School was taken over by the Government. We find that the Tribunal did not commit any illegality or infirmity to record its finding that the respondent No.1 (petitioner in the claim petition) was working in L.T. grade from 1972-73 till October 1976 when the School was taken over by the Government and further the Government is liable to pay salary of L.T. grade to the respondent No.1 after the School was taken over by it. Therefore, the impugned order does not require any interference and we are in full agreement with the finding recorded by the Tribunal.

7. In view of above discussion, the writ petition fails and is dismissed. The order impugned is affirmed. No order as to costs.

(P.C.Verma,J.) **(Rajeev Gupta,C.J.)**

P.Singh